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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 352

UNITED STATES OF AMERICA,
Petitioner,

versus

ILLINOIS CENTRAL RAILROAD COMPANY,
A CORPORATION.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR THE RESPONDENT.

ARTHUR A. MORENO,
SELIM B. LEMLE,
Attorneys for Illinois Central Railroad Company.

E. C. CRAIG,
CHARLES N. BURCH,
H. D. MINOR,
CLINTON H. McKAY,
Of Counsel.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O., La.

INDEX.

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Summary of argument	7
Argument:	
I. The findings of fact of the District Judge are entitled to the same weight as the verdict of a jury and are conclusive and not reviewable here	8
II. By the express terms of the Cruelty to Animals Act the carrier is liable for the statutory penalty prescribed by Section 3 thereof only where it has "knowingly and wilfully" confined animals more than 36 hours	15
(A) It is a cardinal rule of statutory construction that no words appearing in a statute shall be treated as surplusage and that effect shall be given to every clause and part	19
(B) The word "wilfully" as used in the Cruelty to Animals Act denotes an act which is more than negligent: it means purposely or obstinately and is designated to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements	21
(C) The words "knowingly and wilfully" as used in the Cruelty to Animals Act are to be taken according to their common meaning, and when so taken this Act is not made ambiguous by reason of their inclusion in Section 3 thereof; accordingly, the meaning of the Act must be sought in the Act itself and there can be no resort to an extrinsic source to determine its meaning or intent	31
(D) Neither the legislative history, nor the Congressional debates cast any light on the reason for the inclusion of the word "wilfully" in Section 3 of the Cruelty to Animals Act	40
III. The preponderant authority is to the effect that a carrier is not liable for the penalty prescribed by Section 3 of the Cruelty to Animals Act, where the statutory period of confinement is exceeded by reason of an act occurring through the negligence or oversight of the carrier's employee	43
Conclusion	45

CASE INDEX

	Page
Caminetti v. United States, 242 U. S. 470, 37 S. Ct. 192, 61 L. Ed. 442	31, 32, 40
Chicago & N. W. Ry. Co. v. United States, (7th C. C. A.) 234 Fed. 272	9
Chicago B. & Q. R. Co. v. United States, (8th C. C. A.) 194 Fed. 342	30
Commissioner of Immigration v. Gottlieb, 265 U. S. 310, 44 S. Ct. 528, 68 L. Ed. 1031	40
County Canvassing Board v. Lester, 96 Fla. 484, 118 So. 201	24
Fairport R. Co. v. Meredith, 292 U. S. 589, 54 S. Ct. 826, 78 L. Ed. 1446	38
Felton v. United States, 96 U. S. 699, 24 L. Ed. 875	21
Ginsberg & Sons v. Popkin, 285 U. S. 204, 52 S. Ct. 322, 76 L. Ed. 704	20
Jeanery v. Chicago & I. Traction Co., 306 Ill. 392, 138 N. E. 203	10, 25
Kelly v. Mellott, (7th C. C. A.) 135 Fed. 74	25
Lacey v. Louisville & N. R. Co., (5th C. C. A.), 152 Fed. 134	10
McBroom v. Scottish Mortgage & Land Investment Co., 153 U. S. 318, 14 S. Ct. 852, 38 L. Ed. 729	32
Merritt v. Welsh, 104 U. S. 694, 26 L. Ed. 896	36, 40
Meyer v. Dollar S. S. Line (D. C. Washington), 43 F. (2d) 425	24
Minneapolis, St. P. & S. S. M. Ry. Co. v. United States, (8th C. C. A.) 240 Fed. 315	17
Missouri K. & T. Ry. Co. v. United States, 178 Fed. 15	21
Montclair v. Ramsdell, 107 U. S. 147, 2 S. Ct. 391, 27 L. Ed. 431	20
New Union Coal Co. v. Walker, 182 Ark. 460, 31 S. W. (2d) 753	25
Oregon-Washington R. & Nav. Co. v. United States, (9th C. C. A.), 205 Fed. 337	27, 45
Payne v. Vance, 103 Ohio State 59, 133 N. E. 85	25
Philadelphia & R. Ry. Co. v. United States, (3rd C. C. A.), 247 Fed. 466	8
Platt v. Union Pacific Ry. Co., 99 U. S. 48, 25 L. Ed. 424	19
Potter v. United States, 155 U. S. 438, 15 S. Ct. 144, 39 L. Ed. 214	22
Rice v. The Minnesota & N. W. RR. Co., 1 Black 360, 17 L. Ed. 147	20
St. Clair v. Duluth Street Ry. Co., 155 Minn. 203, 193 N. W. 690	10

CASE INDEX—(Continued)

	Page
St. Joseph Stock Yards Co. v. United States, (8th C. C. A.), 187 Fed. 104	27, 35, 45
St. Louis & S. F. R. Co. v. United States, (8th C. C. A.), 169 Fed. 69	26, 33, 43, 45
St. Louis Merchants' Bridge Terminal Railway Co. v. United States, (7th C. C. A.), 209 Fed. 600	28, 45
Spurr v. United States, 174 U. S. 728, 19 S. Ct. 812, 43 L. Ed. 1150	22
Texas & Pacific v. Rigsby, 241 U. S. 233, 36 S. Ct. 482, 60 L. Ed. 874	18
United States v. Baker, 261 Fed. 703	17
United States v. Boston & M. R. R. (1st C. C. A.), 84 F. (2d) 365	12, 44
United States v. Chicago R. I. & P. Ry. Co., (D. C. N. D. Ill.), 211 Fed. 770	30
United States v. I. C. R. R. Co. (5th C. C. A.), 90 F. (2d) 213	1, 35, 43
United States v. Jefferson Electric Mfg. Co., 291 U. S. 386, 54 S. Ct. 443, 78 L. Ed. 859	12
United States v. Kansas City Southern Ry. Co., (8th C. C. A.), 202 Fed. 828	30
United States v. Lehigh Valley R. Co., (3rd C. C. A.), 204 Fed. 705	29, 44
United States v. Missouri Pacific R. R. Co., 278 U. S. 269, 49 S. Ct. 133, 73 L. Ed. 322	37
United States v. Murdock, 290 U. S. 389, 78 L. Ed. 381, 54 S. Ct. 223	23
United States v. Philadelphia & R. Ry. Co., (D. C. E. D. Penn.), 223 Fed. 214	30, 44
United States v. Shreveport Grain & Elevator Company, 287 U. S. 77, 53 S. Ct. 42, 77 L. Ed. 175	31, 38
United States v. Sioux City Stock Yards Co., (C. C. N. D. Iowa W. D. 1908), 162 Fed. 556	45
United States v. Southern Rwy. Co., (D. C. E. D. Tenn.), 1 F. (2d) 607	30, 45
United States v. Standard Brewery, 251 U. S. 210, 40 S. Ct. 139, 64 L. Ed. 229	31, 40
United States v. Stockyards Terminal Ry. Co., (8th C. C. A.), 173 Fed. 19	45
United States v. Union Pacific R. Co., (8th C. C. A.), 169 Fed. 65	34, 45
Vena, In re, (D. C. Washington), 46 F. (2d) 81	24
Wright v. Vinton Branch of the Mountain Trust Bank, 300 U. S. 440, 57 S. Ct. 556, 81 L. Ed. 487	39

STATUTES

	Page
Ash Pan Act, Act of May 30, 1908, 35 Stat. 476, 45 U. S. C. 17, et seq.	18
Boiler Inspection Act, Act of February 17, 1911, 36 Stat. 913, 45 U. S. C. 22, et seq.	18
Cruelty to Animals Act, Act of March 3, 1873, Revised Statutes 4386-4390	38
Cruelty to Animals Act, Act of June 29, 1906, 45 U. S. C. 71, 73 and 74	2
Hours of Service Act, Act of March 4, 1907, 34 Stat. 1415, 45 U. S. C. 61, et seq.	16
Judicial Code, Sec. 240 (a)	2
Revised Statutes, Section 649, 28 U. S. C. 773	11
Safety Appliance Acts, Act of March 2, 1893, 27 Stat. 531; Act of April 14, 1910, 36 Stat. 296, 45 U. S. C. 1, et seq.	18

MISCELLANEOUS

Congressional Globe, Vol. 104, Part 5, 42nd Congress, First Session, Page 4235	41, 42

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BRIEF FOR THE RESPONDENT.

Opinions Below.

The District Court's findings of fact and conclusions of law appear at R. 22-24. The opinion of the Circuit Court of Appeals appears at R. 52-56, and is reported in *90 F. (2d) 213.*

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered May 26, 1937. (R. 56). The petition for writ of

certiorari was filed August 26, 1937, and granted October 11, 1937 (R. 57). The United States invoked the jurisdiction of this Court under *Section 240 (a) of the Judicial Code*, as amended by the Act of February 13, 1925.

Question Presented.

Whether in an action for penalties under the Cruelty to Animals Act of June 29, 1906, *Sections 1, 3 and 4, (U. S. C., Title 45, Sections 71, 73 and 74)*, the Government is entitled to recover the penalty imposed by Section 3 of the Act on those who "knowingly and wilfully" fail to comply with its provisions, without any showing of knowledge and wilfullness.

Statement.

Since the statement of the case contained in the Government's brief omits certain matter which, in our opinion, is pertinent to our contentions, we restate the case.

The petition (R. 2) alleges that the respondent "knowingly and wilfully" confined cattle in a car for 37 hours without unloading them for rest, water and feeding, on an interstate journey between Hermanville, Mississippi and New Orleans, Louisiana. While respondent admitted the confinement of the cattle in its answer (R. 5), it denied that it confined the cattle "knowingly and wilfully", and directly put at issue the allegation of knowledge and wilfullness. The answer alleged affirmatively that the confinement was the result of the negligent oversight of respondent's Night General Yardmaster at New Orleans, who had been advised by telegraph of the approximate time of the arrival of this car of cattle and when the legal confinement period would expire; that because of the improb-

ability of the car being handled on regular trains (so as to reach destination before the expiration of the legal confinement period), he had an extra engine and crew awaiting the arrival of the car at New Orleans, had it switched immediately and placed for unloading in the Crescent City Stock Yard prior to the expiration of the 36 hour period; that nevertheless, through oversight, he neglected to notify the employee whose duty it was to unload the cattle to do so, and that this oversight resulted in the cattle being confined in the cars one hour over the permissible period.

Petitioner moved for a judgment on the petition and answer (R. 9) which was overruled (R. 10), and the case was set down for trial on the merits.

The parties then stipulated certain evidentiary facts and waived trial by jury (R. 11). It was stipulated, among other things, that the car was loaded with cattle at Hermanville, Mississippi at 3:00 P. M. on October 8, 1932 and shipped to New Orleans, Louisiana, with a 36 hour release signed by the shipper (R. 12); that the car arrived at the Stuyvesant Dock Yards(*) of respondent in New Orleans at 11:35 P. M. on October 9, 1932, with two other cars of cattle (R. 13); that respondent's Night General Yardmaster had received advance information (by telegraph) from respondent's dispatcher at McComb, Mississippi, of the approximate time of the arrival of this car and when the period of rest(**) for the cattle was up; that

(*) If material, we here call attention to the fact that the designation "Stuyvesant Dock (Stock) Yards" appearing on page 3 of petitioner's brief is incorrect, the word "Stock" having been erroneously supplied by petitioner. Stuyvesant Dock Yard is on the Mississippi River in New Orleans, adjacent to the wharves, and is not a stock yard.

(**) Should be "when the legal period of confinement for the cattle was up."

because of the necessity of prompt handling of the cattle and the improbability of handling the car on regular trains (so as to reach destination prior to the expiration of the legal confinement period) he had procured an extra engine and crew and had them waiting for the arrival of the car, which was immediately switched and placed for delivery at the Crescent City Stock Yards at 2:50 A. M. on October 10, 1932, at which time the 36 hours permissible for the confinement of the cattle had not elapsed (R. 14); that respondent's Night General Yardmaster, whose duty it was to do so, failed to notify the Railroad Company's employe whose duty it was to unload the cattle that the car would be placed in the night time, which resulted in the car not being unloaded until 4:00 A. M. October 10, 1932 (R. 14), and that respondent's night General Yardmaster was dead (R. 14).

Though no evidence was in fact introduced on the trial of the case, the right to introduce evidence not inconsistent with the evidentiary facts stipulated was specifically reserved (R. 14), and it was further specifically stated in the stipulation that it was not agreed whether or not "said cattle were knowingly and wilfully confined for more than 36 hours" (R. 15), but that the legal rights were to be determined by the facts set forth in the stipulation and the evidence introduced on the trial of the cause.

The case was submitted to the District Court on the stipulation (R. 22). The United States moved for a judgment in its favor (R. 15) and findings of fact and conclusions of law (R. 18), and the respondent, Illinois Central Railroad Company, moved for a judgment in its favor (R. 16), and, in the alternative, for special charges

(R. 16). Included in the alternative request was one for general findings in respondent's favor and special findings of fact and law (R. 17).

The District Court denied petitioner's motion for a judgment and request for findings of fact and conclusions of law and reserved to petitioner a bill of exception to each of the rulings (R. 25), and rendered a judgment in favor of respondent, Illinois Central Railroad Company, dismissing the suit of the United States (R. 27). Findings of fact and conclusions of law were made substantially as had been requested by the respondent, Illinois Central Railroad Company (R. 22), and to these findings of fact and conclusions of law the United States also excepted (R. 26).

In his "Findings of Fact" the District Judge not only found all of the evidentiary facts agreed on in the stipulation which was entered into by the parties, but also found certain ultimate facts which, so far as they are here pertinent, are:

> "That the Illinois Central Railroad Company, defendant attempted in good faith to comply with the statutory requirement to unload the cattle within the statutory period." (R. 22).
>
> "That the failure of the Illinois Central Railroad Company to unload the cattle during the statutory period was not knowing and wilful." (R. 22).
>
> "That the failure of the Illinois Central Railroad Company to unload the cattle during the statutory period was due to the negligent oversight of the night yardmaster employed by the said defendant in failing to notify an employee of the Illinois Central Railroad Company to unload the said car of cattle

within the statutory period after the said night yardmaster had caused the said cattle to be transported to destination by a special train in a bona fide attempt to observe the said statutory requirement to unload the cattle within thirty-six hours, all as set forth specifically in paragraphs six and seven of the stipulated facts, which are attached hereto and made a part hereof." (R. 22-23).

In his "Conclusions of Law" the District Judge held that in an action for a penalty under Section 3 of the Cruelty to Animals Act *(45 U. S. C. 73)*, in order to determine whether cattle have been "knowingly and wilfully" confined, resort should not be had to the language of Section 1 of the act *(45 U. S. C. 71)*, and to that extent these two sections of the Cruelty to Animals Act should not be read in *pari materia* (R. 23). The Court also held that the negligence of a carrier's employee "while performing his regular duties is not equivalent to knowledge and wilfullness as these words are used in Section 73, Title 45 U. S. C. A.", (R. 23-24); that the failure to comply with the statutory requirement for unloading, watering and feeding the animals "must be occasioned by the knowing and wilfull act of a carrier" in order to render a carrier liable for the penalty, "and negligent failure to comply with the statute would not render the carrier liable for the penalty" (R. 24); and, finally, the Court held "that although there was actual negligence as set forth in the conclusions of fact and the stipulation, there was no wilfullness and knowledge within the meaning of Section 73, Title 45 U. S. C. A.", (R. 24).

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court (R. 52-56).

Summary of Argument.

I.

A jury having been waived and the case submitted to the District Judge on a stipulation of certain evidentiary facts which omitted the ultimate fact essential to the imposition of the penalty: whether or not the cattle had been confined "knowingly and wilfully", and the District Judge having found in favor of respondent Railroad Company, this finding of fact is entitled to the same weight as a verdict of a jury and is conclusive and not reviewable here.

II.

By the express terms of the Cruelty to Animals Act the carrier is liable for the statutory penalty prescribed by Section 3 thereof only where it has "knowingly and wilfully" confined animals more than 36 hours.

(A) It is a cardinal rule of statutory construction that no words appearing in a statute shall be treated as surplusage and that effect shall be given to every clause and part.

(B) The word "wilfully" as used in the Cruelty to Animals Act denotes an act which is more than negligent; it means purposely or obstinately and is designed to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.

(C) The words "knowingly and wilfully" as used in the Cruelty to Animals Act are to be taken according to their common meaning, and when so taken this Act is not made ambiguous by reason of their inclusion in Section

3 thereof; accordingly, the meaning of the Act must be sought in the Act itself and there can be no resort to an extrinsic source to determine its meaning or intent.

(D) Neither the legislative history, nor the Congressional debates cast any light on the reason for the inclusion of the word "wilfully" in Section 3 of the Cruelty to Animals Act.

III.

The preponderant authority is to the effect that a carrier is not liable for the penalty prescribed by Section 3 of the Cruelty to Animals Act, where the statutory period of confinement is exceeded by reason of an act occurring through the negligence or oversight of the carrier's employee.

ARGUMENT.

I.

The findings of fact of the District Judge are entitled to the same weight as the verdict of a jury and are conclusive and not reviewable here.

The question of whether or not the Cruelty to Animals Act has been violated "knowingly and wilfully" is a question of fact to be determined by the jury, or where a jury has been waived, by the District Judge. In either event, the finding of this ultimate fact binds the appellate courts and is not reviewable by them.

In *Philadelphia & R. Ry. Co. v. United States, (3rd C. C. A.), 247 Fed. 466,* which was an action to recover a penalty for a violation of the Cruelty to Animals Act, a

jury was waived and the case submitted on a stipulation of fact to the District Judge, who found that the railroad's violation of the statute was knowing and wilfull. Discussing this finding, the Circuit Court of Appeals said:

> "All the facts were undisputed, and the only point involved in the case now being considered is whether the District Court had competent evidence before it to support its finding that the railway's violation of the statute was knowing and willful.
>
> "*Such a finding is one of fact, and, like the verdict of a jury, binds a court of appeal, if it be supported by competent evidence.*" (Italics ours).

Chicago & N. W. Ry. Co. v. United States, (7th C. C. A.), 234 Fed. 272, (two cases) likewise involved the imposition of penalties for the violation of the Cruelty to Animals Act. Evidentiary facts were stipulated, but the ultimate fact of the wilfullness of the confinement was omitted from the stipulation. Both sides moved for a directed verdict; the District Court denied defendant's motion but granted the Government's, and directed a verdict for the United States. The Court of Appeals held that the question was one of fact for the jury, and that a judgment should not have been directed, saying:

> "*The ultimate question of the willfulness of the act of confinement must be determined from the evidentiary facts,* and it makes no difference that such facts appear by stipulation of the parties rather than through oral or documentary evidence.
>
> "Unless it can be said that reasonable minds would not differ in the conclusion to be drawn from the conceded facts, *the conclusion must be reached, not by the court as a matter of law, but by the trier of facts, the jury.*" (Italics ours).

The jurisprudence is generally to the effect that the question of wantonness or wilfullness is a question of fact to be submitted to and found by the jury.

In *Lacey v. Louisville & N. R. Co., (5th C. C. A.), 152 Fed. 134*, a suit for the wrongful death of plaintiff's intestate resulting from a railroad company's act in kicking freight cars across a public crossing likely to be used by pedestrians or vehicles at any time, without any one to control their movements or give warning of their approach, the Court held that the question of whether or not the act was wilfull or wanton was one for the jury.

In *Jeanery v. Chicago & I. Traction Co., 306 Ill. 392, 138 N. E. 203*, the Court held that whether the injuries to a railroad switching crew foreman by an interurban car at a grade crossing were wilfully and wantonly inflicted was a question for the jury.

Is *St. Clair v. Duluth Street Ry., 155 Minn. 203, 193 N. W. 690*, the Court held that whether the motorman of a street car was wilfully negligent in failing to exercise ordinary care after seeing the automobile in a place of danger and colliding with the automobile, was a question to be determined by the jury.

The jurisprudence of the State courts in automobile, street car and railroad crossings cases is preponderantly to the effect that the question of whether an injury has been inflicted through wanton and wilfull negligence is one for the jury.

We deem unnecessary further citation of authority on the point that the question of whether an act was knowingly and wilfully committed is one of fact to be determined by the jury.

The stipulation (R. 11) waiving the jury and agreeing on certain evidentiary facts specifically excludes any agreement as to the ultimate fact necessary to the determination of this case, that is whether the carrier "knowingly and wilfully" confined the cattle for a period longer than that permitted by the Cruelty to Animals Act. From the stipulated evidentiary facts, the District Judge was free to have concluded that the carrier had acted "knowingly and wilfully" in confining the cattle; however, the District Judge found this ultimate fact in favor of the respondent Railroad Company and specifically found that the Railroad Company *"attempted in good faith to comply with the statutory requirement to unload the cattle in the statutory period"* (R. 22); that the failure of the respondent Railroad Company *"to unload the cattle during the statutory period was not knowing and wilfull"* (R. 22); and that the failure of the respondent Railroad Company to unload the cattle during the statutory period was due to the negligent oversight of its night general yardmaster in failing to notify an employee of the Railroad Company to unload the cattle after this night yardmaster had caused the cattle to be transported to destination by a special engine "in a bona fide attempt to observe the said statutory requirement to unload the cattle within thirty-six hours" (R. 22-23). These findings of fact of the District Judge are entitled to the same effect as a verdict of a jury *(R. S. 649, 28 U. S. C. 773)*, and were not reviewable by the

Fifth Circuit Court of Appeals, and are not reviewable here, notwithstanding the fact that as an original proposition the Fifth Circuit Court of Appeals might have reached a different result on the stipulated evidentiary facts or that this Court might possibly do so.

In *United States v. Jefferson Electric Mfg. Co., 291 U. S. 386, 54 S. Ct. 443, 78 L. Ed. 859,* while considering a similar situation, this Court said *(291 U. S. 407):*

> "Whether the District Court erred in denying the defendant's motion at the conclusion of the evidence for judgments thereon in his favor must be determined by ascertaining whether there was substantial evidence fairly tending to establish every element of the plaintiff's causes of action. We think there was such evidence. There was conflict in it; parts of it admitted of diverging inferences; and as to some matters the preponderating weight was difficult of ascertainment. But these were all matters for the trial court to determine. It was exercising the functions of a jury and its findings are on the same plane as if embodied in a jury's special verdict. We are accordingly of opinion that the motion was rightly overruled, and that the Circuit Court of Appeals erred in not so holding. Even if there was some basis for thinking the weight of the evidence was with the defendant, as was strongly urged at our bar, it was not within the province of that court to reexamine the evidence and reverse the judgments because of what it regarded as error of fact."

A similar situation was presented to the First Circuit Court of Appeals in the case of *United States v. Boston & M. R. R., 84 F. (2d) 365,* a suit by the United States against the Boston & M. R. R. for a penalty for confin-

ing sheep in cars longer than permitted by the Cruelty to Animals Act. There too the case was submitted to the District Judge on an agreed statement of fact which omitted an admission of the ultimate fact necessary to liability under the terms of the statute, that is whether or not the confinement of the sheep in the cars more than thirty-six hours was the result of an act knowingly and wilfully done by the carrier. The District Judge found that the facts stipulated "did not establish a wilfull disregard of the statute" and ordered that judgment be rendered for the defendant. Affirming the District Court's judgment, the Court of Appeals said:

> "Although, according to the agreed facts, the defendant knew, or ought to have known, that its conduct might result in violations of the statute, the agreed facts did not include a finding of the ultimate fact essential to the imposition of a penalty, viz., that the acts complained of were willful violations of the statute. Whether the defendant's conduct was willful or not was for the trial court to determine as an inference of fact from the agreed facts; they being all the evidence in the case from which the conclusion could be drawn.
>
> "* * * * * *
>
> "When the agreed facts contain all the facts *essential* to a judgment for one party or the other, then an appeal from such a judgment raises the question whether the facts agreed upon were sufficient to support the judgment; and this is so irrespective of whether an exception was taken to the judgment or not, for, in such case, the error, if one exists, appears upon the record proper and no exception is necessary. Sanfeliz v. Bank (C. C. A.) 74 F. (2d)

> 338, 340. But in this case the facts agreed upon do not contain all the facts essential to a judgment, and a finding of an ultimate fact one way or the other was required for its justification. This being so, an exception to the judgment on the ground that the agreed facts presented only a question of law could avail nothing, as the agreed facts alone do not require a verdict either way. United States v. Smith, supra."

We submit that, according to the unanimous jurisprudence, the finding of the District Judge that the cattle were not "knowingly and wilfully" confined by the respondent carrier beyond the statutory period is a finding of fact which is entitled to the same weight and dignity as the verdict of a jury; that this finding was not reviewable by the Fifth Circuit Court of Appeals, and is not reviewable by this Court; that all other questions which the Government has sought to raise are immaterial to the proper disposition of this case, and, accordingly, the decision of the Court below should be affirmed on the ground that there is no question of law before this Court for determination.

While we are firmly convinced that this is the proper disposition to be made of this case, nevertheless, if your Honors disagree, we submit that the legal interpretation which has been put upon the Cruelty to Animals Act by the District Court and the Fifth Circuit Court of Appeals is correct, and that the decisions of the Court below should be affirmed.

II.

By the express terms of the Cruelty to Animals Act the carrier is liable for the statutory penalty prescribed by Section 3 thereof only where it has "knowingly and wilfully" confined animals more than 36 hours.

By its express terms, the Cruelty to Animals Act imposes a penalty for its violation only upon a carrier who "knowingly and wilfully" violates its terms.

We do not contend that Congress could not impose upon a carrier the absolute duty to unload cattle within a reasonable period and penalize the carrier's negligent failure to do so; we do contend that Congress has not done so, but has restricted the imposition of a penalty to those cases where the carrier has "knowingly and wilfully" violated the Cruelty to Animals Act.

Section 1 of the Act requires carriers to unload cattle and place them in properly equipped pens for rest, water and feed for a period of at least five consecutive hours after confinement of not more than 28 hours, or, with the written consent of the shipper, 36 hours, "unless prevented by storm or by other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight". However, there is no penalty provided for the violation of this statutory requirement. The sole imposition of a penalty is found in Section 3 of the Act wherein a carrier "who knowingly and wilfully fails to comply with the provisions of the two preceding sections shall for every such penalty be liable for the forfeit and pay a penalty of not less than $100

nor more than $500". Accordingly, by its express terms, the act makes the knowledge and wilfullness of the offending carrier an essential condition precedent to the imposition of the penalty.

It is to be noted that the penalty provision of the Cruelty to Animals Act differs from the penalty provisions of other railroad regulatory acts, in that in the Cruelty to Animals Act the imposition of the penalty is restricted to those cases where the violation of the statute has occurred "knowingly and wilfully". In the others acts the penalty is imposed for the violation of the act regardless of the carrier's knowledge and wilfullness.

The Hours of Service Act was adopted by Congress on March 4, 1907, *(34 Stat. 1415, 45 U.S.C. 61, et seq)*, just a year after Congress had reenacted the Cruelty to Animals Act. That act prohibited interstate rail carriers from permitting specified employees to work for a period exceeding 16 consecutive hours. The statute provides:

> "It shall be unlawful for any common carrier, its officers or agents, subject to this chapter to require or permit any employee subject to this chapter to be or remain on duty for a longer period than sixteen consecutive hours * * *." *(45 U. S. C. 62)*.

The penalty provision is that

> "Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the next preceding section of this chapter, shall be liable to a penalty of not less than $100.00 nor more than $500.00 for each and every violation, to be recovered in a suit or suits to be brought by the

> United States District Attorney in the District Court of the United States having jurisdiction in the locality where such violations shall have been committed; * * *." *(45 U. S. C. 63).*

Minneapolis St. P. & S. S. M. Ry. Co. v. United States, (8th. C. C. A.), 240 Fed. 315 was a case under this act in which the United States sought to recover the penalty. The carrier defended on the ground that though certain of its employees had actually been on duty more than 16 consecutive hours, their continued employment was due to the carelessness of the employees. The Court discussed the purpose of the bill and quoted from the Congressional Committee Reports from which it appeared that when the bill was reported back from the House Committee on Interstate and Foreign Commerce, that Committee had inserted a provision requiring knowledge on the part of the carrier as a condition precedent to the imposition of the penalty. This condition was stricken from the bill by the Rules Committee, and the acts as finally adopted by Congress omitted the use of the word "knowingly". The Court held that the carrier was liable for the penalty regardless of its knowledge that the act was being violated.

This act was before a United States District Court in *United States v. Baker, 261 Fed. 703*, and what Judge Hutcheson, then District Judge, had to say in disposing of the case is most apposite:

> "In a case of this kind, where the words 'knowingly and wilfully' are not employed, and the carrier is made liable if it requires or permits any employee to be or remain on duty in violation of statutory provisions, the fact of doing the thing pro-

hibited by statute constitutes the offense, although there is no turpitude or wrong arising out of wilfullness or special intent."

The Safety Appliance Acts, (Act of March 2, 1893, *27 Stat. 531;* Act of April 14, 1910, *36 Stat. 296, 45 U. S. C. 1, et seq.)*, likewise impose penalties on a carrier who violates their provisions, without mention of the knowledge and wilfullness of the carrier, and the statute has been interpreted many times by the lower federal courts and by this Court in *Texas & Pacific Ry. Co. v. Rigsby, 241 U. S. 233, 36 S. Ct. 482, 60 L. Ed. 874* as penalizing the carrier for any violation of the absolute duty put upon it by the Acts.

Again in the Ash Pan Act, (Act of Congress of May 30, 1908, *35 Stat. 476, 45 U. S. C. 17, et seq.*), we find a penalty imposed on a carrier who violates its provisions, regardless of whether or not the violation was knowing and wilfull *(45 U. S. C. 18)*. The Boiler Inspection Act, (Act of February 17, 1911, *36 Stat. 913*, as amended, *45 U. S. C. 22, et seq.)*, likewise imposes a penalty on a carrier who violates its provisions, regardless of whether the violation is knowing and wilfull *(45 U. S. C. 34)*.

It therefore appears that Congress has enacted a body of regulatory law and that in only one of the statutes, the Cruelty to Animals Act, has it conditioned the imposition of a penalty upon the knowledge and wilfullness of the carrier violating the act. It further appears that while debating the Hours of Service Act Congress considered the advisability of conditioning the imposition of the penalty for its violation on the knowledge of the offending

carrier and decided not to do so. It therefore follows that Congress consciously and deliberately has differentiated between statutes designed to protect human beings and the one statute designed to protect animals, and in the case of the former has imposed an absolute duty on carriers and penalized any breach thereof regardless of the carrier's knowledge and wilfullness, while in the latter it has only penalized the breach where it has resulted in the knowledge and wilfullness of the carrier.

(A) **It is a cardinal rule of statutory construction that no words appearing in a statute shall be treated as surplusage and that effect shall be given to every clause and part.**

In construing the penalty provision of the Cruelty to Animals Act, full effect must be given to the words "knowingly and wilfully", and they cannot be disregarded.

In *Platt v. Union Pacific R. R. Co., 99 U. S. 48, 58, 25 L. Ed. 424*, this Court said:

> "But the admitted rules of statutory construction declare that a legislature is presumed to have used no superfluous words. Courts are to accord a meaning, if possible, to every word in a statute. In Commonwealth v. Alger (7 Cush. (Mass.) 53-89), it was said that in putting a construction upon any statute every part must be regarded, and it must be so expounded, if practicable, as to give some effect to every part of it. So, in People v. Burns (5 Mich. 114), it was held that some meaning, if possible, must be given to every word in a statute, and that where a given construction would make a word redundant, it was reason for rejecting it. To the same effect is Dearborn and Others v. Inhabitants

of Brookline (97 Mass. 466); and in Gates v. Salmon (35 Cal. 576) it was ruled that no words are to be treated as surplusage or as repetition."

In *Montclair v. Ramsdell, 107 U. S. 147, 152, 2 S. Ct. 391, 27 L. Ed. 431*, this Court said:

"It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."

In *Ginsberg & Sons v. Popkin, 285 U. S. 204, 208, 52 S. Ct. 322, 76 L. Ed. 704*, this Court said:

"General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. United States v. Chase, 135 U. S. 255, 260. Specific terms prevail over the general in the same or another statute which otherwise might be controlling. Kepner v. United States, 195 U. S. 100, 125. In re Hassenbusch, 108 Fed. 38. United States v. Peters, 166 Fed. 613, 615. The construction contended for would violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute. Market Co. v. Hoffman, 101 U. S. 112, 115. Ex parte Public National Bank, 278 U. S. 101, 104."

In *Rice v. The Minnesota & North Western Railroad Co., 1 Black 360, 379, 17 L. Ed. 147*, this Court said:

"Whether the provision be just or unjust, the words mentioned are a part of the act, and it is not competent for this court to reject or disregard a material part of an act of congress, unless it be so clearly repugnant to the residue of the act that the whole cannot stand together."

(B) The word "wilfully" as used in the Cruelty to Animals Act denotes an act which is more than negligent: it means purposely or obstinately and is designed to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.

The words "knowingly" and "wilfully" have a well understood common meaning. They have been used countless times in state and federal statutes, both penal and civil.

The Government is undertaking to distinguish between the meaning of the word "wilfully" as used in a criminal statute and as used in a civil statute, and is contending that as this is a civil suit to collect a penalty, a construction should be given to the word "wilfully" different from that usually accorded it in construing criminal statutes.

We submit that "while this proceeding is civil in its form, it is criminal in its nature and effect", (Judge Sanborn in *Missouri K. & T. Ry. Co. v. United States, 178 Fed. 15, 18)*, and no distinction should be drawn in the use of the word "wilfully" based on a theoretical difference between a civil and criminal statute.

In any event, we submit that as a practical matter there is no such distinction as is evidenced by the jurisprudence of this Court in which the word "wilfully" has been defined.

Felton v. United States, 96 U. S. 699, 24 L. Ed. 875, was a civil proceeding to collect a penalty from distillers

"upon the alleged ground that they 'knowingly and wilfully' omitted, neglected, and refused to construct and maintain pipes and other apparatus connecting the receiving cisterns in their distilleries with other apparatus in the manner required by the statute of the United States." The defense was lack of knowledge and wilfullness, and in sustaining this defense, this Court said:

> "So far from showing or tending to show that, when the new still was made and placed in the distillery, the defendants, or any of their servants, had any knowledge of the incapacity of the receiver to hold all the wines that might be distilled on any day, it showed their ignorance of the defect until it was too late to remedy it for the distillation then taking place. There was, therefore, the absence of that knowledge which could render the neglect wilful, and therefore actionable. They must have 'knowingly and wilfully' omitted to furnish a receiver of sufficient capacity, before the severe penalty prescribed could be imposed upon them and their distilled spirits subjected to forfeiture. *Doing or omitting to do a thing knowlingly and wilfully, implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it. 'The word "wilfully," ' says Chief Justice Shaw, 'in the ordinary sense in which it is used in statutes, means not merely "voluntarily," but with a bad purpose.' 20 Pick. (Mass.) 220. 'It is frequently understood,' says Bishop, 'as signifying an evil intent without justifiable excuse.' Crim. Law, vol. i, sect. 428.*" (Italics ours).

Let us compare the definition of "wilfull" found in this civil proceeding with the definition pronounced by this Court in criminal proceedings.

In *Potter v. United States, 155 U. S. 438, 15 S. Ct. 144, 39 L. Ed. 214*, and again in *Spurr v. United States*,

174 U. S. 728, 19 S. Ct. 812, 43 L. Ed. 1150, criminal prosecutions for "wilfully" violating the provisions of an act relative to certifying checks by national banks, this Court in defining "wilfully" said:

> "* * * The significance of the word 'wilful' in criminal statutes has been considered by this court. In Felton v. United States, (96 U. S. 699, 702,) it was said:
>
> > 'Doing or omitting to do a thing knowingly and wilfully, implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it. "The word 'wilfully' " says Chief Justice Shaw, 'in the ordinary sense in which it is used in statutes, means not merely "voluntarily," but with a bad purpose.' 20 Pick. (Mass.) 220. 'It is frequently understood,' says Bishop, 'as signifying an evil intent without justifiable excuse.' Crim. Law, vol. 1, sect. 428."

In *United States v. Murdock, 290 U. S. 389, 78 L. Ed. 381, 54 S. Ct. 223,* cited and relied on by the Government in its brief, which was a prosecution under the Revenue Acts of 1926 and 1928 for "wilfully" failing to supply information where it appeared that the defendant had refused to answer questions on the ground he might be subjected to prosecution under state laws, the Court in defining "wilfully" again referred to the case of *Felton v. United States, supra,* which, as heretofore pointed out, was a civil suit for a penalty.

Accordingly, we submit that the jurisprudence of this Court demonstrates that the theoretical distinction which the Government is seeking to have this Court draw does not in fact exist, and there is no difference in the meaning of the word "wilfully" when contained in a crim-

inal statute from its signification in a civil statute imposing a penalty for its violation.

The lower federal courts in construing the word "wilfully" in civil cases have also accepted it in the same significance as used in criminal cases.

"Wilfull" as applied to an injury inflicted by a bankrupt defeating the right to a discharge in bankruptcy has been defined as free activity inspired by conscious motion of will. *In re Vena (D. C. Washington), 46 F. (2d) 81.*

In construing the meaning of "wilfull misconduct" of an injured seaman as barring him from his right to wages, maintenance and cure, the Court again defined "wilfull" as "free activity inspired by conscious motion of the will." *Meyer v. Dollar S. S. Line, (D. C. Washington), 43 F. (2d) 425.*

The same is true of the countless decisions of the State Courts wherein they have been called upon to construe the word "wilfull" in civil statutes. For instance:

In construing a Florida election statute providing that any candidate refusing or "wilfully" failing to obey the provisions of another section of the statute should not be allowed to have his name printed on the official ballot, the Court held that the word "wilfully" denotes some element of design, intention, or deliberation and conscious purpose to disobey, and not merely innocent neglect or mere omission to perform a previously imposed duty. *County Canvassing Board v. Lester, 96 Fla. 484, 118 So. 201.*

In a statute providing a right of action for injury occasioned by wilfull violation thereof the word "wilfull" has been defined as a conscious act rather than mere inadvertence. *New Union Coal Co. v. Walker, 182 Ark. 460, 31 S. W. (2d) 753, 755.*

In amplification of the principle announced in the last cited case that "wilfulness" means a conscious act rather than mere inadvertence, we further point out that "wilfulness" means something entirely different from "negligence".

In *Kelly v. Mellott, (7th C. C. A.), 135 Fed. 74, 76,* the Court said:

> "Negligence and wilfullness are as unmixable as oil and water. 'Wilful negligence' is as self-contradictory as 'guilty innocence' ".

In *Payne v. Vance, 103 Ohio State 59, 133 N. E. 85,* (quoting *Louisville, N. A. & C. R. Co. v. Bryan, 107 Ind. 51, 7 N. E. 807),* the Court said:

> "The words 'willful' and 'negligent', used in conjunction, have not always been employed with strict regard for accuracy of expression. To say that an injury resulted from the negligent and willful conduct of another is to affirm that the same act is the result of two exactly opposite mental conditions. It is to affirm in one breath than an act was done through inattention, thoughtlessly, heedlessly, and at the same time purposely and by design."

The construction for which we are contending for the words "knowingly and wilfully" has been accorded

them many times by the lower federal courts in suits for penalties under the Cruelty to Animals Act.

The words "knowingly and wilfully" as used in the Cruelty to Animals Act have been construed in many cases by the Federal Courts, among which are the following:

In *St. Louis & S. F. R. Co. v. U. S., (Eighth C. C. A.) 169 Fed. 69*, the court said at *page 71:*

> " 'Knowingly' evidently means with a knowledge of the facts which taken together constitute the failure to comply with the statute, as in the case where one carrier receives from another a car loaded with cattle, and, with knowledge of how long they then had been confined in the car without rest, water, or food, prolongs the confinement until the statutory limit is exceeded. 'Wilfully' means something not expressed by 'knowingly', else both would not be used conjunctively. And presumptively it means something not expressed by 'willingly', else the change from that word would not have been made when the old statute (Rev. St. Sects. 4386-4390 (U. S. Comp. St. 1901, pp. 2995-2997) was being re-enacted. Crawford v. Burke, 195 U. S. 176, 190, 25 Sup. Ct. 9, 49 L. Ed. 147; Hopper v. Denver, etc. Co., 84 C. C. A. 21, 24, 155 Fed. 273, 276. But it does not mean with intent to injure the cattle or to inflict loss upon their owner because such intent on the part of a carrier is hardly within the pale of actual experience or reasonable supposition. United States vs. Union Pacific RR. Co., supra. So, giving effect to these considerations, we are persuaded that it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements."

In *St. Joseph Stockyards Co. v. United States, (Eighth C. C. A.) 187 Fed. 104*, the court said, in part, at *page 105:*

> "The words 'knowingly and willfully' in this statute have significance, and in the enforcement of it they must have effect. '"Knowingly" evidently means with a knowledge of the facts which, taken together, constitute the failure to comply with the statute, as is the case where one carrier receives from another a car loaded with cattle, and, with knowledge of how long they then had been confined in the car without rest, water, or food, prolongs the confinement until the statutory limit is exceeded. * * * "Wilfully" means purposely or obstinately, and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.' St. Louis & S. F. R. Co. v. United States, 94 C. C. A. 437, 439, 169 Fed. 69, 71; United States v. Sioux City Stockyards Co., (C. C.) 162 Fed. 556, 560, 562; United States v. Stockyards Terminal Co. (C. C.) 172 Fed. 452; New York Central & H. R. R. Co. v. United States, 165 Fed. 833, 841, 91 C. C. A. 519, 527."

In *Oregon-Washington R. & Nav. Co. v. United States (Ninth C. C. A.) 205 Fed. 337*, the court said, in part, at *page 339:*

> "The words 'knowingly and willfully', as employed in the act, have been many times construed and their meaning determined. 'Knowingly' signifies 'with a knowledge of the facts which, taken together, constitute the failure to comply with the statute'; and 'willfully' means 'purposely or obstinately, and is designed to describe the attitude of a carrier who, having a free will or choice, either in-

tentionally disregards the statute or is plainly indifferent to its requirements.' Such is the interpretation given by Mr. Justice Van Devanter while a member of the Circuit Court of Appeals of the Eighth Circuit. St. Louis & S. F. R. Co. v. United States, 169 Fed. 69, 71, 94 C. C. A. 437, 439. The same court in another case, in an opinion rendered by Adams, Circuit Judge (United States v. Union Pac. R. Co., 169 Fed. 65, 67, 94 C. C. A. 433, 435), defines the word 'wilfully,' not as implying a vicious or evil intent, but the 'intentional doing of an act forbidden by the statute.' This view of the significance of the word is followed in a still later case from the same circuit. Chicago, B. & Q. R. Co. v. United States, 194 Fed. 342, 114 C. C. A. 334. See, also, New York Cent. & H. R. R. Co. v. United States, 165 Fed. 833, 91 C. C. A. 519."

In *St. Louis Merchants' Bridge Terminal Railway Co. v. United States (Seventh C. C. A.), 209 Fed. 600*, the Court, at *page 601*, adopted the construction placed upon the statute by the Eighth Circuit Court of Appeals, saying *(page 601)*:

"The declaration charges, as the statute requires, that plaintiff in error 'knowingly and willfully confined' said stock in said cars for a longer period than that permitted by the statute. As was said by the United States Circuit Court of Appeals for the Eighth Circuit in C., B. & Q. Ry. Co. v. United States, 194 Fed. 342, 114 C. C. A. 334:

" 'Willfully' means purposely or obstinately, and is designed to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements."

In *United States v. Lehigh Valley R. Co. (Third C. C. A.), 204 Fed. 705*, the court said *(page 708)*:

> "* * * The verdict requires us to assume that the lambs were not fed within the statutory period; but we repeat that in our opinion the fact is accounted for by negligence, and cannot be attributed to a 'knowing and willful' disregard of duty.
>
> "These words mean something more than 'negligent'. A knowing and willful omission to perform a duty is not, as we think, the same as a merely careless omission. For example: Let us suppose that the man whose duty it was to feed these lambs had learned the length of their confinement from the card accompanying the shipment, but that his attention had been diverted, so that he forgot his task until the period limited by the statute had passed. No doubt this would be negligence, but to call it a 'willful' failure of duty seems to contradict one of the essential facts supposed. It is not possible to omit an act knowingly and willfully, unless the act be consciously in the mind; if it be no longer in the mind, it cannot be within the range of either knowledge or intention."

It would serve no useful purpose to cite further definitions by the lower Federal courts, but we refer your Honors to the following cases in which the words "knowingly and willfully" were construed and in which the courts have held that a carrier is only to be penalized in those cases where there has been a willful and deliberate disregard of the statute, that is to say where the carrier has deliberately or obstinately refused to comply with the provisions of the statute or has manifested such reckless in-

difference as to whether or not the statute is compiled with, that the act amounts to a deliberate disregard of the statute. See:

United States v. Kansas City Southern Ry. Co. (8th C. C. A.) 202 Fed. 828, 833;
Chicago B. & Q. R. Co. v. United States (8th C. C. A.) 194 Fed. 342, 346;
United States v. Chicago R. I. & P. Ry. Co. (D. C. N. D. Ill.) 211 Fed. 770;
United States v. Philadelphia & R. Ry. Co. (D. C. E. D. Penn.) 223 Fed. 213;
United States v. Southern Rwy. Co. (D. C. E. D. Tenn.) 1 F. (2d) 607.

We submit that the word "wilfully" as used in the Cruelty to Animals Act is to be taken in its ordinary acceptation and means purposely or obstinately, and is designed to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements; that "wilfully" means something entirely different from "negligently" and that the former means purposely and by design, while the latter means unintentionally, thoughtlessly and heedlessly; that before an act can be wilfully performed there must be a conscious motion of will and free activity as distinguished from inactivity and unconsciousness, which are both earmarks of negligence; and finally, that "wilfully" presupposes either deliberate action, intent, recklessness, or absolute sheerlessness as opposed to mere inattention and inadvertence which constitute negligence.

(C) The words "knowingly and wilfully" as used in the Cruelty to Animals Act are to be taken according to their common meaning, and when so taken this Act is not made ambiguous by reason of their inclusion in Section 3 thereof; accordingly the meaning of the Act must be sought in the Act itself and there can be no resort to an extrinsic source to determine its meaning or intent.

A cardinal rule of statutory construction is that in seeking the meaning of a statute, resort must first be had to the language of the statute itself.

> "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, * * * ." *Caminetti v. United States, 242 U. S. 470, 485, 37 S. Ct. 192, 61 L. Ed. 442.*
>
> "Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed." *United States v. Standard Brewery, 251 U. S. 210, 217, 40 S. Ct. 139, 64 L. Ed. 229.*

In *United States v. Shreveport Grain & Elevator Company, 287 U. S. 77, 83, 53 S. Ct. 42, 77 L. Ed. 175,* this court pointed out that the English rule is the same and cited with approval *King v. Commissioners, 5 A. & E. 804, 816,* in which that Court said that it

> "* * * was constrained to give the words of a private act then under consideration an effect which probably was 'never contemplated by those who obtained the act, and very probably not intended by the legislature which enacted it. But our duty is to look to the language employed, and construe it in its natural and obvious sense'."

Another cardinal principle of statutory construction is that in examining the language of a statute the words used are to be taken in their common meaning.

> "Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them. *Caminetti v. United States, supra, at p. 485.*

> "Of course, effect must be given to the intention of the legislature as manifested by the words of the statute, interpreted according to their natural signification." *McBroom v. Scottish Mortgage and Land Investment Co., 153 U. S. 318, 323, 14 S. Ct. 852, 38 L. Ed. 729.*

Taking the words "knowingly" and "wilfully" as found in Section 3 of the Cruelty to Animals Act in their common meaning, we find an act which is logical and wholly unambiguous; we find an act which in Section 1 prescribes a standard of conduct for carriers of cattle, and which in Section 3 penalizes the carrier who "knowingly and wilfully" fails to comply with that standard. The fact that the statute does not undertake to penalize the carrier who does not comply with the standard of conduct prescribed by Section 1 of the Act, unless the violation of that standard occurs "knowingly and wilfully", does not make the statute ambiguous; on the contrary, it is quite unambiguous. The logical, and we submit the proper construction of the Cruelty to Animals Act is that Section 1 thereof prescribes a standard of conduct for a carrier, the violation of which gives rise to a civil cause of action by any shipper, consignee or other private party who may be injured thereby, and it is no defense to such an action that the carrier's employees were negligent. On the other hand,

Section 3 of the act penalizes the carrier who "knowingly and wilfully" violates the act, and it is no defense to a suit for such a penalty that neither the shipper nor consignee have been damaged, nor the cattle injured, but there is reserved to the carrier the defense that the violation of the statute, by reason of which the penalty is sought to be inflicted, was not "knowingly and wilfully" committed.

The construction for which we are contending was adopted by Justice Van Devanter when he sat as Circuit Judge in the Eighth Circuit, in *St. Louis & S. F. R. Co. v. U. S., 169 Fed. 69*, in which he said:

> "At the conclusion of all the evidence the defendant requested that a verdict be directed in its favor, and error is assigned upon the denial of that request. It will be assumed, but without so deciding, that the statute is directed not merely against the continuous confinement of cattle in cars beyond the prescribed period of 28 or 36 hours, as the case may be, without rest, water, or food, but also against unloading them for rest, water, and feeding into pens not properly equipped therefor, that the pen into which these cattle were unloaded was not properly equipped in the sense of the statute, and that ordinarily to unload cattle into such a pen for rest, water, and feeding is to fail to comply with the statute; and, with these matters so disposed of, we will consider only whether there was any substantial evidence from which the jury reasonably could have found that the defendant knowingly and willfully failed to comply with the statute in this instance. We say 'knowingly and willfully' because, as was recently said by Judge Adams in speaking for this Court, '*it appears that section 1 creates a duty to be performed by carriers, and that section 3 imposed a penalty not for the failure to perform the duty, but only when the carrier "knowingly and*

willfully" fails in that regard.' United States v. Union Pacific R. R. Co. (C. C. A.) 169 Fed. 65. *The qualifying words cannot be disregarded. They mean something, and whatever that may be is an essential element of every right to the penalty."* (Italics ours).

In *United States v. Union Pacific R. Co. (8th C. C. A. 1909), 169 Fed. 65*, referred to by Mr. Justice Van Devanter, *supra*, the Court said:

"* * * Section 1 of the act of June 29, 1906 provides that no railroad engaged in interstate commerce in the transportation of cattle, sheep, swine, or other animals shall, without the written request of the owner or person in custody thereof, 'confine the same in cars * * * for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner into properly equipped pens for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented by storm or by other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight'. The provisions of section 2 are immaterial for our present inquiry. Section 3 provides 'that any railroad' engaged in interstate commerce '* * * who knowingly and willfully fails to comply with the provisions of the two preceding sections shall for every such failure be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars.' Section 4 provides 'that the penalty created by the preceding section shall be recovered by civil action. * * *' From the foregoing it appears that section 1 creates a duty to be performed by carriers *and that section 3 imposes a penalty not for the failure to perform the duty, but only when the carrier 'knowingly and willfully' fails in that regard."* (Italics ours).

Referrring to its decision in the last cited case, the Eighth Circuit Court of Appeals in the case of *St. Joseph Stockyards Company v. United States (1911), 187 Fed. 104, 105*, said:

> "This court has often had occasion to consider the 28-hour law, and from its previous decisions these conclusions may be safely drawn. Section 1 of this statute imposes upon every railroad company carrying cattle from one state to another the duty to unload them for rest, water, and feeding once in 28 hours, in the absence of a request for an extension of this time to 36 hours; *and section 3 of the act imposes penalties for which these judgments were rendered, not for a failure to discharge the duty prescribed by section 1, but for 'knowingly and willfully' failing to discharge it.* United States v. Union Pacific R. Co., 94 C. C. A. 433, 434, 169 Fed. 65, 66." (Italics ours).

The construction for which we are contending was likewise adopted by Judge Hutcheson in his opinion in this case (R. 54, *90 F. (2d) 213, 215*):

> "We think appellee has the right of it. To take appellant's view we should have to disregard the settled meaning of the words 'knowing and wilful' when used in penalty and criminal statutes. To take that view we should have to assume that Congress in Section 3 idly used two words of known and settled legal meaning, intending that the section should be read as though they were not in it. To take that view we should have to close our eyes to the obvious distinction which Congress plainly intended and aptly made by the use of the words in question, between the duty to unload unless prevented by causes beyond its control, imposed upon the carrier by Section 1, and the liability for penalties imposed upon it by Section 3 for knowingly and wilfully failing to perform the imposed duty."

The Cruelty to Animals Act as so construed is plain and unambiguous. However the United States is unwilling to accept the construction of the Act wherein the words "knowingly and wilfully" are taken in a common meaning and according to their natural signification, because to do so it is claimed would result in the inability of the Government to inflict the penalty in those cases where the carrier's conduct in confining the cattle beyond the statutory period was due to the ordinary negligence of its employees. What the Government is seeking is a construction of the Cruelty to Animals Act whereby a penalty will be imposed on every carrier who confines cattle in cars beyond the statutory period, unless prevented by storm or by other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight.

The answer to the Government's contention is that Congress has not enacted a statute which imposes a penalty upon the carrier who has not violated its terms "knowingly and wilfully", and that if it is necessary or desirable to impose an absolute duty on a carrier to unload cattle within a certain time and to penalize the breach of this duty, it is for Congress to so determine and not for the courts to bring about that result by substituting statutory construction for legislation. As was said by this court in *Merritt v. Welsh, 104 U. S. 694, 705, 26 L. Ed. 896*, a case in which the Government was seeking to subject certain goods to the Custom Laws under a forced construction thereof, which this Court refused to adopt:

> "A better remedy than that of making a forced construction of the law is in the power of Congress. All that has to be done is, to change the

law so as to reach the goods in their new form, if it is thought desirable to do so. If the law is found defective, let it be altered so as to attain the result desired."

In *United States v. Missouri Pacific R. R. Co., 278 U. S. 269, 49 S. Ct. 133, 73 L. Ed. 322,* where the United States was insisting on a forced construction of a statute to bring about a result desired by the Government, but not intended by Congress, this Court said *(page 277):*

> "The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that where no ambiguity exists there is no room for construction. Inconvenience or hardships, if any, that result from following the statute as written must be relieved by legislation. It is for Congress to determine whether the Commission should have more authority in respect of the establishment of through routes. Construction may not be substituted for legislation. United States v. Wiltberger, 5 Wheat, 76, 95-96. United States v. Fisher, 2 Cranch 358, 386. Lake County v. Rollins, 130 U. S. 662, 670. Caminetti v. United States, 242 U. S. 470. Ex parte Public National Bank, ante, p. 101. United States v. Colorado & N. W. R. Co., 157 Fed. 321, 327."

Nevertheless, the United States is attempting to have this Court make a forced construction of the Cruelty to Animals Act whereby the words "knowingly" and "wilfully" will not be taken in their common meaning, and in aid of such construction seeks to refer to legislative history

of the Cruelty to Animals Act and the congressional debates which took place upon the adoption of the original act (Cruelty to Animals Act of March 3, 1873).

Our reply is that there is no ambiguity in the Cruelty to Animals Act and nothing to construe, and, therefore that there is not only no reason to refer to legislative history and congressional debates which Congress held on the adoption of the Act of 1873, but also that it is improper to do so. As was said by this Court in *United States v. Shreveport Grain & Elevator Co., supra, at P. 83,* when it was sought to refer to the Report of the House Committee on Interstate and Foreign Commerce on a bill which afterward became the act in question in that case:

> "In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. Wisconsin R. R. Comm. v. C. B. & Q. R. Co., 257 U. S. 563, 588-589; Penna. R. Co. v. International Coal Co., 230 U. S. 184, 199; Van Camp & Sons v. American Can Co., 278 U. S. 245, 253. Like other extrinsic aids to construction their use is 'to solve, but not to create an ambiguity.' Hamilton v. Rathbone, 175 U. S. 414, 421. Or, as stated in United States v. Hartwell, 6 Wall. 385, 396, 'If the language be clear it is conclusive. There can be no construction where there is nothing to construe.'"

In *Fairport R. Co. v. Meredith, 292 U. S. 589, 594, 54 S. Ct. 826, 78 L. Ed. 1446,* this Court said:

> "But we are asked to hold that the title expresses the sole intent of the act, and this involves

a question of statutory construction. The title of an act and the history leading up to its adoption, as aids to statutory construction, are to be resorted to only for the purpose of resolving doubts as to the meaning of the words used in the act in case of ambiguity. Patterson v. Bark Eudora, 190 U. S. 169, 172; Cornell v. Coyne, 192 U. S. 418, 430; Lapina v. Williams, 232 U. S. 78, 92. Compare Russell Motor Car Co. v. United States, 261 U. S. 514, 519, 522. But here the words of sections 1 and 9 of the act speak plainly and nothing in the nature or operation of the legislation requires, or suggests the necessity of, an appeal to extrinsic aids to determine their meaning. It may be that the protective operation of section 2 of the act requiring automatic couplers was not meant to extend to persons other than employees."

The latest case involving reference to extraneous sources for the purpose of construing the meaning of a statute is *Wright v. Vinton Branch of the Mountain Trust Bank, 300 U. S. 440, 57 S. Ct. 556, 81 L. Ed. 487.* In that case the Court found that the language of the Frazier-Lemke Act was not free from doubt, so that the Court was "justified in seeking enlightenment from reports of congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure (300 U. S. 463)". In support of that statement there appears a foot-note of which the pertinent portion reads:

"Where the meaning of legislation is doubtful or obscure, resort may be had in its interpretation to reports of Congressional committees which have considered the measure, * * * and to the debates in general in order to show common agreement on purpose *as distinguished from interpretation of particular phraseology.* * * *." (Italics ours).

The Wright-Vinton Branch case is important as pointing out the exception for which we are contending here, that in the case of the interpretation of particular phraseology where as here, there is involved interpretation of the phrase "knowingly and wilfully", there can be no reference to the debates in Congress.

We repeat, the Cruelty to Animals Act is plain and unambiguous. Its enactment was unquestionably within the power of Congress, and "the sole function of the courts is to enforce it according to its terms". *Caminetti v. United States, supra, at P. 485.* It is the court's "duty" to do so *(United States v. Standard Brewery, supra, 217)*, and Courts "have no choice but to follow it without regard to the consequences". *(Commissioner of Immigration v. Gottlieb, 265 U. S. 310, 313, 44 S. Ct. 528, 68 L. Ed. 1031)*, and "whatever may have been in the minds of the individual members of Congress." *Merritt v. Welsh, supra, at P. 702).* In that situation "the duty of interpretation does not arise". *Caminetti v. United, supra, at P. 485.*

(D) **Neither the legislative history nor the Congressional debates cast any light on the inclusion of the word "wilfully" in Section 3 of the Cruelty to Animals Act.**

Even if the Cruelty to Animals Act were ambiguous, and it were necessary to resort to extrinsic sources to seek aid in its construction, there is nothing in the legislative history of the Cruelty to Animals Act nor in the Congressional debates attendant on the adoption of the present

Act of 1906 or its predecessors, Sections 4386-4390 of the Revised Statutes, previously the Cruelty to Animals Act of March 3, 1873, which sheds any light on the reason for the inclusion of the word "wilfull" in the Act.

As pointed out in the Government's brief, in the original Act of 1873 we find the word "wilfully", which became "willingly" in the Revised Statutes, and when the Cruelty to Animals Act was reenacted in 1906, the word "wilfully" was again used. Why the word was changed from "wilfully" in the Act of 1873 to "willingly" in the Revised Statutes is unknown, and, in our opinion, immaterial. There is nothing in the debates attendant on the adoption of the Act of 1906 which casts any light on the use of the word "wilfully", and the only source from which any information could possibly be drawn is in the debates in Congress on the adoption of the original Act of 1873.

These debates, which appear in the Congressional Globe, Vol. 104, Part 5, 42nd Congress, First Session, the pertinent parts of which are set out in the Government's brief at page 17, show that the Act originated in the House of Representatives and that as originally passed there, it did not contain the words "knowingly and wilfully". These words were incorporated in the Act by a Senate amendment.

From the debates in the Senate it appears that some of the Senators feared that the bill as passed by the House might result in injustice to a line of railroad which might

receive a shipment of cattle from another carrier which had already confined them a number of hours, without the receiving road being advised of that fact, and this lack of knowledge might result in the receiving road violating the Act. After a lengthy debate on the subject of knowledge which the receiving road might have and which would be available to it, the following proceedings are set forth on Page 4235 of Vol. 104 of the Congressional Globe, Part 5, 42nd Congress, First Session:

> "Mr. Casserly. I wish to offer an amendment to insert on line 28, page 2, after the word 'shall', the words 'knowingly and wilfully;' so that a company which receives animals that have already been 28 hours without rest, water, and feeding, shall not be liable except the scienter is proved; in other words, except it is shown that the company knew the fact.
>
> "Mr. Frelinghuysen. That is wholly unnecessary; that is the law now."
>
> The amendment was adopted.

It is to be noted that in the debate in the Senate and where the amendment was introduced, not one word was ever said about "wilfullness". All that the Senators had concerned themselves with in the debate, and all that Senator Casserly sought to cover in his amendment was "scienter"; that no carrier should be penalized for confining cattle too long "except it is shown that the company *knew the fact*". This result could have been accomplished by inserting in the act the word "knowingly" alone; for this purpose it was unnecessary to insert "wilfully". Therefore, neither the debate in Congress nor the history of the legis-

lation explain why the word "wilfully" was inserted in the act.

The Government does not draw any distinction between the words "knowingly and wilfully", though it is quite apparent that, as remarked by the Court in *St. Louis & S. F. R. Co. v. United States, (8th C. C. A.), 169 Fed. 69:*

> " 'Wilfully' means something not expressed by 'knowingly' else both would not be used conjunctively."

That the word "wilfully" means something not expressed by "knowingly" amply appears from the definitions hereinabove set forth.

Neither the history of the legislation nor the debate in the Senate on the adoption of the original Cruelty to Animals Act of 1873 sheds any light on the inclusion of the word "wilfully" in that act.

III.

The preponderant authority is to the effect that a carrier is not liable for a penalty under Section 3 of the Cruelty to Animals Act, where the statutory period of confinement is exceeded by reason of an act occurring through the negligence or oversight of the carrier's employee.

As Judge Hutcheson stated in his opinion in this case, (R. 55), *90 F. (2d) 213, 215:*

> "There is some difference of opinion in the authorities as to the meaning and intent of the act. A few

decisions (citations omitted) have taken the view of it the United States urges upon us. The current of authority, however, runs strongly the other way. (Citations omitted). This is in accordance with the general rule that the word 'wilfully' when used in statutes of this kind, has the well-defined meaning of deliberate and conscious purpose. It gives effect to the view that statutes in which it is found subject to penalty or punishment only those who deliberately and consciously, that is, with set purpose, do what they are forbidden by the statutes to do. Under that view such statutes do not subject to penalties those who, though they violate them, do so unintentionally through oversight, or simple negligence."

We submit that the weight of the jurisprudence in the First, Third, Sixth, Seventh, Eighth and Ninth Circuit Courts of Appeal is to the effect that in a suit by the United States for a penalty for violating the Cruelty to Animals Act, it is incumbent upon the United States to make some showing of knowledge and wilfulness, and cite in support thereof the following cases:

First Circuit.

United States v. Boston & M. R. R., (C. C. A. 1936), 84 F. (2d) 365.

Third Circuit.

United States v. Lehigh Valley R. Co., (C. C. A. 1913), 204 Fed. 705;

United States v. Philadelphia & R. Ry. Co., (D. C. E. D. Pa. 1915), 223 Fed. 214.

Sixth Circuit.

United States v. Southern Ry. Co., (D. C. E. D. Tenn. N. D. 1923), 1 F. (2d) 607.

Seventh Circuit.

St. Louis Merchants' Bridge Terminal Ry. Co. v. United States, (C. C. A. 1913), 209 Fed. 600.

Eighth Circuit.

United States v. Union Pacific Ry. Co., (C. C. A. 1909), 169 Fed. 65;

St. Louis & S. F. R. Co. v. United States, (C. C. A. 1909), 169 Fed. 69;

United States v. Stockyards Terminal Ry. Co. (C. C. A. 1910), 178 Fed. 19;

St. Joseph Stockyards Co. v. United States, (C. C. A. 1911), 187 Fed. 104; and

United States v. Sioux City Stock Yards Co., (C. C. N. D. Iowa W. D. 1908), 162 Fed. 556.

Ninth Circuit.

Oregon-Washington R. & Nav. Co. v. U. S. (C. C. A. 1913), 205 Fed. 337.

Conclusion.

In conclusion, we submit that there is presented here only a question of fact, which has been determined by the Judge of the District Court and is not reviewable here, and that there is not here presented any question of law for this Court to review. In the alternative, we submit

that all the legal questions involved have been properly decided by the District Court and the Fifth Circuit Court of Appeals, and that their judgments are correct and should be affirmed.

Respectfully submitted,

ARTHUR A. MORENO,
SELIM B. LEMLE,
Attorneys for Respondent, Illinois Central Railroad Company.

E. C. CRAIG,
CHARLES N. BURCH,
H. D. MINOR,
CLINTON H. McKAY,
Of Counsel.

New Orleans, Louisiana,
Jan. 7, 1938.

SUPREME COURT OF THE UNITED STATES.

No. 352.—October Term, 1937.

The United States of America, Petitioner, vs. Illinois Central Railroad Company, a Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[February 28, 1938.]

Mr. Justice Butler delivered the opinion of the Court.

Petitioner brought this suit in the federal court for eastern Louisiana to recover from respondent a penalty for violation of the Act of June 29, 1906, 34 Stat. 607, 45 U. S. C. §§ 71-74. Upon an agreed statement, the court found the facts, stated its conclusions of law and gave judgment for respondent. The circuit court of appeals affirmed. 90 F. (2d) 213. This Court granted a writ of certiorari. 302 U. S. —.

The question for decision is whether, as a matter of law, the facts found show conclusively that respondent knowingly and willfully failed to comply with the requirements of the first section of the Act.

It declares that no carrier whose road forms a part of a line over which cattle shall be conveyed from one State to another shall confine the same in cars for longer than 28 consecutive hours without unloading them into properly equipped pens for rest, water and feeding unless prevented by storm or by other accidental and unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight; upon the written request of the owner the time of confinement may be extended to 36 hours. Section 2 requires that animals so unloaded shall be properly fed and watered. Section 3 provides: "Any railroad . . . who knowingly and willfully fails to comply with the provisions of the two preceding sections shall for every such failure be liable for and forfeit and pay a penalty of not less than

$100 nor more than $500 . . . " recoverable by civil action in the name of the United States. § 4.

The petition alleged that respondent knowingly and willfully confined cattle in a car for 37 hours without unloading them. The answer admitted that the cattle were continuously confined in the car from three o'clock in the afternoon of October 8, 1932, when loaded at point of shipment, Hermanville, Mississippi, until four o'clock of the morning of October 10 when unloaded at destination, New Orleans, Louisiana, but directly put in issue the allegation that respondent knowingly and willfully so confined the cattle. It alleged that the car arrived at New Orleans at 11:35 in the evening of October 9; that having received advance information of the approximate time of arrival and of the time when the 36-hour period would expire, respondent's yardmaster, in order promptly to handle the shipment, procured an extra engine and crew immediately upon arrival of the car to take it to the stockyards and, before the expiration of the permissible time of confinement, there place it for unloading; that the yardmaster negligently failed to notify the employee, whose duty it was to unload; and because of his oversight and negligence the cattle were continuously confined in the car for 37 hours.

A motion by petitioner for judgment on the pleadings having been overruled, the parties waived trial by jury and stipulated evidentiary facts in substance as alleged in the answer. They left open the question whether respondent knowingly and willfully confined the cattle for more than 36 hours. The case was submitted for decision on the agreed statement without more. The court found evidentiary facts in accordance with the stipulation, held failure to unload within the time was due to the negligence of the yardmaster, and concluded that respondent did not knowingly and willfully fail to comply with the statute.

The case depends upon the meaning of the phrase "knowingly and willfully", used in § 3 to characterize the transgressions for which penalties are imposed. The Act is to be construed to give effect to its humanitarian provisions, and as well to the exceptions in favor of the carriers. *Chicago & N. W. Ry. Co.* v. *United States*, 246 U. S. 512, 517-518. The penalty is not imposed for unwitting failure to comply with the statute. *United States* v. *Sioux City Stock Yards Co.*, 162 Fed. 556, 562. *United States* v. *Stockyards*

Terminal Ry. Co., 178 Fed. 19, 23. *St. Joseph Stockyards Co.* v. *United States*, 187 Fed. 104; *Oregon-Washington R. & Nav. Co.* v. *United States*, 205 Fed. 341, 343. But in this case, the respondent knew when the permissible period of confinement would expire, brought the car to destination, and, within the time allowed, placed it for unloading. By allowing the 36 hours to expire, it "knowingly" failed to comply with the statute.

Mere omission with knowledge of the facts is not enough. The penalty may not be recovered unless the carrier is also shown "willfully" to have failed. In statutes denouncing offenses involving turpitude, "willfully" is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong, the word is often used without any such implication. Our opinion in *United States* v. *Murdock*, 290 U. S. 389, 394, shows that it often denotes that which is "intentional, or knowing, or voluntary, as distinguished from accidental", and that it is employed to characterize "conduct marked by careless disregard whether or not one has the right so to act". The significance of the word "willfully" as used in § 3 now before us, was carefully considered by the circuit court of appeals for the eighth circuit in *St. Louis & S. F. R. Co.* v. *United States*, 169 Fed. 69. Speaking through Circuit Judge Van Devanter, now Mr. Justice Van Devanter, the court said (p. 71): "'Willfully' means something not expressed by 'knowingly', else both would not be used conjunctively. . . . But it does not mean with intent to injure the cattle or to inflict loss upon their owner because such intent on the part of a carrier is hardly within the pale of actual experience or reasonable supposition. . . . So, giving effect to these considerations, we are persuaded that it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." That statement has been found a useful guide to the meaning of the word "willfully" and to its right application in suits for penalties under § 3. *United States* v. *Stockyards Terminal Ry. Co.*, *supra*, 23. *St. Joseph Stockyards Co.* v. *United States*, *supra*, 105. *Oregon-Washington R. & Nav. Co.* v. *United States*, 205 Fed. 337, 339. *St. Louis Merchants' Bridge T. Ry. Co.* v. *United States*, 209 Fed. 600. See also *Chicago, B. & Q. R. Co.* v. *United States*, 194 Fed.

342, 346. *United States* v. *Kansas City Southern Ry. Co.*, 202 Fed. 828, 833.

Considered as unaffected by the yardmaster's negligence, respondent's failure to take the cattle from the car already placed at the yard for unloading, unquestionably discloses disregard of the statute and indifference to its requirements and compels the conclusion that, within the meaning of § 3, respondent willfully violated its duty to unload as required by § 1. It is immaterial whether the yardmaster's negligence or oversight was intentional or excusable. As between the government and respondent, the latter's breach is precisely the same in kind and degree as it would have been if its yardmaster's failure had been intentional instead of merely negligent. The duty violated did not arise out of the relation of employer and employee but was one that, in virtue of the statute, was owed by respondent to the shippers and the public. As respondent could act only through employees, it is responsible for their failure. To hold carriers not liable for penalties where the violations of §§ 1 and 2 are due to mere indifference, inadvertence or negligence of employees would defeat the purpose of § 3. Whether respondent knowingly and willfully failed is to be determined by the acts and omissions which characterize its violation of the statute and not upon any breach of duty owed to it by its employees. Respondent's contention that it is not liable because its failure was due to the negligence or oversight of the yardmaster cannot be sustained. *Montana Cent. Ry. Co.* v. *United States*, 164 Fed. 400, 403. *United States* v. *Atlantic Coast Line R. Co.*, 173, Fed. 764, 769. Cf. *Oregon-Washington R. & Nav. Co.* v. *United States*, 205 Fed. 337, 340.

Reversed.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.